File: (b) (6) – Kansas City, MO Date: MAR 28 2018

In re: (b) (6)

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Erin A. Haisman, Esquire

ON BEHALF OF DHS: Jennifer A. May
Assistant Chief Counsel

APPLICATION: Cancellation of removal under section 240A(b)(1) of the Act

The respondent, a native and citizen of Guatemala, appeals the written decision of the Immigration Judge dated June 6, 2017, denying his application for cancellation of removal under section 240A(b)(1) of the Immigration and Nationality Act, 8 U.S.C. § 1229b(b)(1) (2012). The respondent has filed a brief in support of his appeal. In response, the Department of Homeland Security (DHS) requests that the Board dismiss the respondent's appeal and affirm the Immigration Judge's decision. The appeal will be dismissed.

We review the findings of fact, including the determination of credibility, made by the Immigration Judge under the "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i) (2017). We review all other issues, including issues of law, discretion, or judgment, under a de novo standard. 8 C.F.R. § 1003.1(d)(3)(ii).

The respondent argues on appeal that the Immigration Judge erred in finding that he failed to demonstrate that his four United States citizen children would suffer exceptional and extremely unusual economic, educational, and health hardships upon his removal to Guatemala such as to establish eligibility for cancellation of removal. Specifically, the respondent argues that his oldest son will not be able to attend school at his current grade level in Guatemala given his lack of proficiency in Spanish, and that his four children's lack of medical insurance in Guatemala will limit their access to medical care in that country. The respondent also argues that his four qualifying relatives will suffer financial hardship because of his likely inability to obtain employment in Guatemala and the extreme poverty in that country (Respondent's Br. at 4-6).

The respondent further argues on appeal that because his partner, who is also the biological mother of all four qualifying relatives, is from Mexico and has no relatives in Guatemala, she will most likely remain in the United States upon his removal, and that the resulting family separation will cause emotional hardship to all four United States citizen children. The respondent maintains that all these factors, when considered cumulatively, demonstrate the level of hardship required to establish eligibility for cancellation of removal (*Id.* at 6-9).

(b) (6)

We affirm the Immigration Judge's decision and find unpersuasive the respondent's appellate arguments. The respondent's four United States citizen children were 14, 12, six, and two years old at the time of the April 4, 2016, merits hearing. The three oldest qualifying relatives are in school and are doing well. They all write and speak Spanish although their language skills are not as strong as they would need to attend school in Guatemala. All four qualifying relatives are healthy, have no learning issues, and enjoy health insurance through Medicaid. The oldest qualifying relative is in high school and would like to pursue a career in either soccer or a mechanical field and is aware that life in Guatemala would be different. The respondent himself works for a furniture company and is the sole financial provider for his family as his partner does not currently work. He is in good health and would be able to work full time, likely in the fields in Guatemala, if he were to leave the United States. The respondent has family in Guatemala, including his parents and two brothers. He would take at least his three youngest United States citizen children with him upon his removal (IJ at 2-4; Tr. at 24-63; Exhs. 2-3). While on appeal the respondent emphasizes the hardship to his eldest son if he accompanies the respondent to Guatemala, the respondent testified that his eldest son would likely remain in the United States (IJ at 4; Tr. at 43-44).

The evidentiary record shows that the respondent's qualifying relatives would suffer hardship upon the respondent's removal to Guatemala. However, the children are of tender age, they do speak and write Spanish, and they would have family members in Guatemala who could ease their relocation to that country, including by allowing them to live with them at least temporarily. The respondent will most likely not be able to earn the same amount of money working in Guatemala, but that by itself is insufficient to demonstrate exceptional and extremely unusual hardship for cancellation of removal purposes (IJ at 4).

The respondent has not met his burden to show that the hardships in this case would be substantially beyond those normally suffered when a family member is removed from the United States. As such, we agree with the Immigration Judge that the respondent has not established eligibility for cancellation of removal on the basis of exceptional and extremely unusual hardship to a qualifying relative (IJ at 4-5). *See Matter of Recinas*, 23 I&N Dec. 467 (BIA 2002); *Matter of Andazola*, 23 I&N Dec. 319 (BIA 2002); *Matter of Monreal*, 23 I&N Dec. 56 (BIA 2001).

Given the foregoing, we decline to disturb the Immigration Judge's decision. Accordingly, the following order shall be entered.

ORDER: The appeal is dismissed.

FOR THE BOARD